IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

TUESDAY, THE 23RD JANUARY 2007 / 3RD MAGHA 1928

WP(C).No. 605 of 2007(V)

PETITIONER:

S.H.MEDICAL CENTER HOSPITAL,
NAGAMPADOM, KOTTAYAM,
REPRESENTED BY ITS ADMINISTRATOR.

BY ADV. SRI.BECHU KURIAN THOMAS

RESPONDENTS:

1. STATE OF KERALA REPRESENTED BY
   PRINCIPAL SECRETARY,
   GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. THE ASSESSING AUTHORITY (BUILDING TAX)
   THASILDAR, KOTTAYAM.

3. TAHSILDAR,
   REVENUE RECOVERY,
   KOTTAYAM.

BY GOVT. PLEADER SRI SOJAN JAMES

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 23/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.RAMAN,J.

W.P.(C).NO.605 OF 2007

Dated this the 23rd day of January, 2007

JUDGMENT

Petitioner challenges Ext.P6 order passed by the Government under Section 3 of the Kerala Building Tax Act holding that the building owned by the petitioner cannot be exempted from the building tax.

2. According to the petitioner, the building in question comprising a plinth area of 15,671.93 M2 situated in Muttambalam Village, Kottayam District is exempted from payment of building tax as per Section 3(1)(b) of the said Act and inter alia contends that the petitioner-Hospital is a charitable institution registered under the Travancore-Cochin Literary, Scientific and Charitable societies Registration Act, that it is a well-

known hospital in the State and is rendering immense charitable service like free treatment to patients of low income group. The petitioner also admits that the charity is offered only to the needy and the poor for whom free medical relief is afforded while the persons who can afford the nominal charges being charged by the hospital make the payment thereby contributing to the functioning of the institution as a charitable institution. He also contends that being a registered charitable institution, all the income earned by the petitioner is used only for the purpose of charity and maintenance of the hospital and not used for any private purpose and is also barred by the Memorandum of Association of the petitioner, Ext.P2. In Ext.P6 the Government held that the building cannot be exempted from building tax solely

due to the reason that it belongs to a charitable institution or that the income derived by letting out the same is used for charitable purpose. The only relevant fact in deciding the claim for exemption is the purpose for which the building is used. In this case the building belonging to the petitioner is not used for any charitable purpose and therefore the same cannot be exempted from building tax. Reliance was also placed on the decision reported in **Raleppilly T.N.S.S.Union v. State of Kerala (1989 (2) KLT SN 71).** It was also held that in order to come under the section the petitioner has to show a prima facie case that the building is sued principally for religious, charitable or educational purpose or workshops. The petitioner in this case does not have such a case and therefore their claim for exemption

from building tax is not legally sustainable.

3. The point that arises for consideration is whether Ext.P6 order is in any way wrong and contrary to the provisions of Section 3(1)(b) of the Kerala Building Tax Act, 1975. Petitioner placed reliance on a decision of the Division Bench of this Court in **State of Kerala v. St. Gregorious Medical Mission (1992 (1) KLT 230)** in support of their contention. In that case it was held that the fact that some amount is collected from patients, who were admitted in the hospital will not in any way afford as sufficient reasons for holding that the building used for the purpose of running a hospital, which is primarily intended for relief of the sick without any motive for making any profit can be excluded from the beneficial provision contained in Section 3 of the Act. The said decision was

referred to in a subsequent decision of this Court in **Medical Trust Hospital v. State of Kerala (2004(2) KLT 139)** wherein the learned Judge in paragraph 5, after referring to the decision in **St.Gregorious Medical Mission's case (1992 (1) KLT 230)**, held that collection of some amount from patients who can afford to pay does not disentitle a hospital building from building tax exemption. However, in the case of Medical Trust Hospital it was found that it was rendering medical services on commercial lines and free medical services rendered is totally insignificant which is evident from the figures furnished by the petitioner in the audited accounts. Out of the total collection of Rs.19.9 crores for the year ending 31/3/2002, the petitioner therein has spent only Rs.57 lakhs towards charity. In

other words, charity is only 3% of the receipts. On those factual situation, it was held that the petitioner therein was not entitled for any exemption and the Government order was held to be beyond challenge and the order passed by the Government was upheld and the writ petition was dismissed. The said decision was challenged in an appeal before the Division Bench and the Division Bench dismissed the appeal confirming the judgment of the learned Single Judge. The same is reported in the decision in **Medical Trust Hospital v. State of Kerala and others (2004 (2) ILR 408).** The Division Bench in the said decision held that from the figures learned Single Judge concluded that the appellant was rendering medical services not on charitable basis but was levying charges on commercial lines does not call for any interference. It

was also held that a reading of explanation with clause (b), leaves no room for doubt that the buildings which are "used principally" for giving relief to the poor and free medical relief would be deemed to be used principally for charitable purposes and would be exempted from tax, whatever be the objects of the institution owing them. A building which may be owned by a charitable institution but not "used principally" for giving relief to the poor and free medical relief would not be entitled to claim exemption. Similarly a building may not be owned by a charitable institution but if it is used principally for religious, charitable or educational purposes or as a factory or workshop, it would be entitled to the exemption. It is thus clear that a building is not exempt from tax merely because it is owned by a charitable

institution. Such a building would be entitled entitled to exemption only if it is "used principally" for any of the purposes referred to in clause (b) of Section 3(1) of the Act. Coming to the facts of this case and based on the statement of account produced as Ext.P5 it has to be noticed that the hospital collection is Rs.5,75,97,362/- for the year 2002/03 whereas the free medical aid is only a amount of Rs.50,59,014/- for the year 2003-04 the hospital collection is Rs.6,23,74,373/- and the free medical aid is only Rs.53,30,443/- likewise for the year 2004-05 the hospital collection is Rs.7,37,41,580/- and the free medical aid is only Rs.59,87,456/-. From the figures as given above, it could be seen that the building is not "used principally" for the purpose referred to in clause (b) of Section 3 (1) of the Act. The finding in Ext.P6, in such

circumstances, cannot be held to be perverse or contrary to the provisions of the Kerala Building Tax Act.

In the circumstances, I find no merit in this writ petition. Accordingly, the same is dismissed.

P.R.RAMAN,
Judge.

kcv.